IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2989 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MITESHKUMAR JASWANTBHAI MISTRY - Petitioner(s)
Versus
STATE OF GUJARAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :
MR ASIFKHAN I PATHAN for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 16/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 11.11.2005 passed by the Police Commissioner,

Ahmedabad City. By the aforesaid order, the petitioner is detained as a “dangerous person” under preventive detention by exercising powers under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to two criminal cases pending against the petitioner. These cases are registered against the petitioner for offences punishable under section 363, 365, 368, 120.B, 114 as also for 394 of the Indian Penal Code. The detaining authority has found that the activities of the petitioner are such that it will prejudicially affect public order. It is alleged that the petitioner is a head strong person and is extracting money by giving threats and has also tried to kidnap one child.

Mr. Pathan for the petitioner submitted that at the relevant time, the petitioner was already in judicial custody. He further submitted that the detaining authority has stated in the grounds of detention that the petitioner may move an application for bail at any point of time, and after being released on bail, he may again continue with the said activities. Learned advocate for the petitioner further submitted that the detaining authority has not given any reasons as to on what basis and material it has come to the conclusion that the petitioner may move an application for bail at any point of time and after being released on bail, he

may continue with the same activities.

In this connection, reference is required to be made to a recent decision of the Honourable Supreme Court in the case of **T.V. SRAVANAN vs. STATE** reported in (2006) 2 SCC 664. In the said judgment, the Honourable Supreme Court has held as under in paragraphs 13 and 14:

> "13. A somewhat similar reasoning was adopted by the detaining authority in Rajesh Gulati v. Govt. of NCT of Delhi. This Court noticing the facts of the case observed: (SCC pp. 133-134, para 13).
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> > ""13. In this case, the detaining authority's satisfaction consisted of two parts – one: that the appellant was likely to be released on bail and two: that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant was in custody when the order of detention was passed. But the detaining authority said that 'bail is normally granted in such cases'. When in fact the five applications filed by the appellant for bail had been rejected by the courts (indicating that this was not a 'normal' case), on what material did the detaining authority conclude that there was 'imminent possibility' that the

> appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention was passed, the 'normal' rule of release on bail had not been followed by the courts and it could not have been relied on by the detaining authority to be satisfied that the appellant would be released on bail. (See in this context Ramesh Yadav v. District Magistrate, Etah, AIR at p. 316).””

14. We are satisfied that for the same reasons the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The 'imminent possibility' of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority o n the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse

> dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, not sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13.12.2005."

It is also required to be noted that this Court, as back as in January 2003, in the case of **U.A. PATHAN vs. STATE** reported in 2003 (4) GLR 3646 has taken a view that when a detenu is in judicial custody at the time of detention, cogent reasons are required to be given that he is likely to be released on bail. In paragraph 5 of the judgment in the aforesaid case, this Court held as under:

> "5. Learned advocate for the petitioner has fairly stated that, even the bail application, which was subsequently filed by the detenu, was also rejected by the Sessions Court. Learned advocate has relied upon the decision of the Apex Court in the case of Amritlal and other Vs. Union Government, reported in AIR 2000 SC 3675, wherein the Apex Court in paras 4, 5 and 6 observed as under.:
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> > "4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision

of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 CriLJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being

granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

5. It is this reasoning which the learned advocate contended that the High Court should have held to be completely erroneous in the matter of being the basis of an order of detention.

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is `likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the `likelihood of his moving an application for bail' which is different from `likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down."

Looking to the nature and gravity of the offence registered against the detenu, the detaining authority has committed an error in observing in a

routine manner that the detenu would be released on bail, and no cogent reasons are given in the grounds of detention in this regard. There is non application of mind on the part of the detaining authority on this aspect.

In the result, the petition is allowed. Order of detention dated 11.11.2005 passed against the petitioner is quashed and set aside. The petitioner is ordered to be released forthwith unless he is required in connection with any other offence. Rule is made absolute, with no order as to costs.

At this stage, learned advocate for the detenu voluntarily states that in case the detenu is released on bail in connection with the pending case, the detenu will will not enter the Ahmedabad Police Commissionerate area upto 31st July 2006. This voluntary statement of learned advocate for the petitioner is recorded. It is for the Learned Additional Public Prosecutor to inform the concerned authorities about this voluntary statement.

[P. B. MAJMUDAR, J.]

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